

IN THE SUPREME COURT OF MISSISSIPPI

FORD MOTOR COMPANY

PETITIONER

VS.

NO. 2014-M-1822-SCT

GEORGE SULLIVAN AND WIFE, LYDA SULLIVAN  
MELVIN WILSON, PAUL CRAFT, AND ROBIN ROBINSON

RESPONDENTS

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RESPONSE IN OPPOSITION TO PETITION FOR PERMISSION TO  
INTERLOCUTORY APPEAL

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### **CERTIFICATE OF INTERESTED PARTIES**

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made in order that the justices of the Supreme Court and/or the judges of the Court of Appeals may evaluate possible disqualification or recusal.

1. Ford Motor Company, Petitioner/Defendant
2. George Sullivan, Respondent/Plaintiff
3. Lyda Sullivan, Respondent/Plaintiff
4. Melvin Wilson, Respondent/Plaintiff
5. Paul Craft, Respondent/Plaintiff
6. Robin Robinson, Respondent/Plaintiff
7. Richard M. Dye, Counsel for the Petitioner/Defendant
8. Kathleen E. Ingram, Counsel for the Petitioner/Defendant
9. Eugene C. Tullos, Counsel for the Respondents/Plaintiffs
10. Butler Snow, LLP Counsel for the Petitioner/Defendant
11. Tullos and Tullos, Counsel for the Respondents/Plaintiffs

Respectfully submitted,  
s/Eugene C. Tullos  
Eugene C. Tullos  
Attorney for the Respondents



**TABLE OF AUTHORITIES**

**CASES**

*First Investors Corp. v. Rayner*, 738 So.2d 228 (Miss.1999).....2

*Janssen Pharmaceutica Group, Inc. v. Armond*, 866 So.2d 1092 (Miss.2004).....2

*Janssen Pharmaceutica Group, Inc. v. Bailey*, 878 So.2d 31 (Miss.2004).....2

*Ms Life Ins. Co. v. Baker*, 905 So. 2d 1179 (Miss. 2005).....2, 4

**STATUTES AND RULES OF COURT**

M.R.C.P. 20(a).....2, 3, 5

**IN THE SUPREME COURT OF MISSISSIPPI**

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**RESPONDENTS**

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INTERLOCUTORY APPEAL**

The Respondents, by and through counsel, pursuant to Mississippi Appellant Rule 5 file this their response in opposition to the petition appeal interlocutory order.

**STATEMENT OF ISSUES**

Did the trial court abuse its discretion by not severing the plaintiffs' causes of action?

**BACKGROUND**

The Respondents herein filed their complaint against Ford Motor Company for defects experienced in five different vehicles. The suit was originally filed in Smith County, Mississippi and Ford Motor Company moved to transfer venue and to sever. The Circuit Court transferred venue to Covington County but refused to sever the Plaintiffs' claims. George and Lyda Sullivan purchased two Ford vehicles. One of the Sullivan's vehicles was purchased from Magnolia Ford in Simpson County and the other was purchased from Robinson Brothers Ford in Louisiana. Both of the Sullivan's vehicles were serviced at Woolwine Ford in Covington County, Mississippi. Ford Motor Company admits that this transfer of venue as to these Plaintiffs was proper. The remaining Plaintiffs also all purchased Ford vehicles. Melvin Wilson purchased his vehicle in Hinds County, and had it serviced in Hinds County, Scott County, and in Gadsden Alabama. Paul Craft's vehicle was purchased and serviced in Grenada County, Mississippi, and Robin

Robinson's vehicle was purchased in Rankin County and serviced in Rankin County, Mississippi and in the State of Louisiana. Ford Motor Company is seeking to have the Plaintiffs cases severed.

### **STANDARD OF REVIEW**

Mississippi Rule of Civil Procedure 20 gives trial courts broad discretion in determining when and how to try claims. *First Investors Corp. v. Rayner*, 738 So.2d 228, 238 (Miss.1999). Trial court decisions regarding venue and joinder are reversed only for abuse of discretion. *Janssen Pharmaceutica Group, Inc. v. Bailey*, 878 So.2d 31, 45 (Miss.2004); *Janssen Pharmaceutica Group, Inc. v. Armond*, 866 So.2d 1092, 1095 (Miss.2004). We also note that "a trial court ... abuses its discretion by joining parties in cases failing to satisfy the two requirements of Rule 20." *Armond*, 866 So.2d at 1097. Like federal courts, we review cases involving a question of the propriety of Rule 20(a) joinder on a case-by-case basis.

### **ARGUMENT**

The trial court properly changed venue to Covington County, and it was proper in not severing the Plaintiffs claims. In *Ms Life Ins. Co. v. Baker*, 905 So. 2d 1179, 1182-83 (Miss. 2005), the court held,

Under Mississippi Rule of Civil Procedure 20(a), joinder is only proper if both (1) the different plaintiffs' causes of action arise out of the same transaction, occurrence, or series of transactions or occurrences; and (2) some question of law or fact common to all the plaintiffs will arise in the action. The purpose of Rule 20(a) is to establish a "procedure under which several parties' demands arising out of the same litigable event may be tried together, thereby avoiding the unnecessary loss of time and money to the court and the parties that the duplicate presentation of the evidence relating to facts common to more than one demand for relief would entail."

(Citations omitted.)

Under this two-prong test, the Plaintiffs' causes of action arise out the same series of transactions

or occurrences, in that they all purchased 2004-2005 Ford F-250 or Ford F-350 vehicles from Ford Motor Company. Each Plaintiff purchased a Ford vehicle and each has experienced similar problems and/or defects in vehicles of a similar make and model which gives rise to the causes of action *arising out of the same series of transactions or occurrences*. Further, the Plaintiffs' claims arise out of the same series of occurrences in that Ford Motor Company has breached the express and/or implied warranties for each vehicle. The Petitioner/Defendant is misplacing the focus on where the warranty work for each of the Plaintiffs' vehicles was to be made for fixing venue and/or for severance of the Plaintiff's causes of action. The location of the dealerships to which the respective Plaintiffs took their Ford trucks is not the true issue for the issue of severance. The issue is the failure of Ford Motor Company to honor its express warranties and/or the implied warranties for these particular makes and models. Ford Motor Company acknowledges in its Petition for Interlocutory Appeal on pages 1 and 5 that the Plaintiffs' Complaint assert claims for breach of express and implied warranties and failure to properly repair the Plaintiffs' vehicles. It was not the dealerships which were responsible for the defects nor was it the dealerships who failed to ensure the vehicles were repaired but rather the Defendant Ford Motor Company. The respective dealerships are bound by the actions and/or commands of Ford Motor Company concerning warranty work and/or defects in the actual vehicle. The Plaintiffs' causes of action begin and end with Ford Motor Company. It is Ford Motor Company which has injured the Plaintiffs, not the dealerships. The distinct event common to all of Plaintiffs' claims is Ford Motor Company's breach of the express and/or implied warranties.

The Plaintiffs also meet the second prong of the test set forth in Rule 20(a) in that the same questions of law or facts common to all the Plaintiffs will arise in the action. Because the

vehicles are of the same year models and/or makes for all Plaintiffs, the same questions of law or fact are common to all Plaintiffs. If each of the Plaintiffs' cases were severed there would be "unnecessary loss of time and money to the court and the parties that the duplicate presentation of the evidence relating to facts common to more than one demand for relief would entail." *Baker* at 1183. Furthermore, the Plaintiffs' causes of action are of such a similar nature arising out of the same series of transactions or occurrences that judicial economy would be better served with one trial. In this action the questions of fact and law will be the same. Ford Motor Company in defending the action will most assuredly file the same motions with substantially identical arguments for summary judgment or protective orders, propound the same discovery requests, raise the same defenses, rely on the same expert witnesses, assert the same jury instructions, and file the same post-trial motions. Likewise, the Plaintiffs all will use the same experts and would incur a substantially greater expense to have the same experts testify at numerous trials rather than only one trial. Likewise, the Plaintiffs will rely on the same legal arguments, jury instructions and other factors in each trial which would be better served to have combined into one trial. The time and expense would be greatly reduced not only for the Plaintiffs but the Defendant as well to have one trial wherein the experts were required to attend rather than four or five different trials. Further, the same depositions would most likely be required of the experts and/or witnesses which could be better scheduled if all were compiled into one action. The trial court did not err in refusing to sever the Plaintiffs' causes of action and the Petition for Interlocutory Appeal should be denied.

### **CONCLUSION**

The trial court properly transferred venue with substantial contacts with the most Plaintiffs



in this action. Furthermore, the Plaintiffs' causes of action meet the two prong test of Rule 20(a) of the Mississippi Rules of Civil Procedure. The different Plaintiffs' causes of action (1) arise out of the same series of transactions or occurrences; and (2) some question of law or fact common to all the plaintiffs will arise in this action. As such the trial court did not abuse its discretion in refusing to sever the Plaintiffs' cases, and this Court should deny the Petition for Interlocutory Appeal.

Respectfully submitted,

s/Eugene C. Tullos  
EUGENE C. TULLOS  
ATTORNEY FOR THE  
RESPONDANTS/PLAINTIFFS

#### CERTIFICATE OF SERVICE

I, Eugene C. Tullos, attorney of record for the Respondents, do hereby certify that this day I electronically filed the foregoing Response in Opposition to the Petition for Interlocutory Appeal with the Clerk of the Court using the ECF system which sent notification of such filing to the following:

Richard M. Dye, Esq.  
Kathleen E. Ingram, Esq.  
BUTLER SNOW, LLP  
P.O. Box 6010  
Ridgeland, MD 39157

And

Honorable Eddie H. Bowen  
Circuit Judge  
P.O. Box 545  
Raleigh, MS 39153

This the 7<sup>th</sup> day of January, 2015.

s/ Eugene C. Tullos  
EUGENE C. TULLOS  
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